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### The function of RUDENIM on immigration monitoring for refugee

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#### ABSTRACT

*Indonesia's strategic geographic position as a link between the Central and Middle East Asia regions with Australia in the movement of migration flow has made Indonesia a transit area that many immigrants pass through. What needs to be watched out for are illegal entrances (mouse path), both sea routes and land routes, considering that Indonesia is a large archipelagic country and existing crossings have not been optimally guarded. Looking at these conditions, the existence of a world organization in Indonesia that deals with refugees, namely the United Nations High Commissioner for Refugees (UNHCR), can provide some temporary or permanent solutions, with short or long processes and mechanisms, which must be passed by refugees. The existence of refugees in Indonesia should be managed by the flow of the process in which refugees will be placed in third countries. In the waiting process when they will be dispatched to a third country, the refugees occupy a shelter which is then under the supervision of RUDENIM (Immigration Detention Center). From the description above, the problem in this research is studying RUDENIM's supervisory function on additional tasks in the context of immigration control of refugees in the aspect of state sovereignty. The research method used in answering problems is using normative juridical research methods, by analyzing secondary data and legal materials related to statutory regulations, books and scientific journals. This research also uses several approaches, namely statutory approach, conceptual approach and case approach.*

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### Introduction

One of the immigration functions is the supervisory function, where supervision is essentially an act of assessing (testing) whether something has gone according to plan. With supervision, mistakes will be found which can then be fixed and prevented for happening again. This means that the focus of supervision lies in the effort to ensure that the implementation of a task is in accordance with the plan hence supervision activity is carried out during the process of an ongoing activity, not after the end of the process (Deshinta, 2017). In essence, the supervisory function of immigration control is in carrying out tasks that give the immigration institution authority as an arm of the state in maintaining the sovereignty of the Republic of Indonesia in the flow of human movements in and out of the territory of the Republic of Indonesia.

Immigration control is carried out not only when foreigners enter and / or leave the territory of Indonesia, but also as long as the foreigners are staying in Indonesian territory, including their activities (Explanation of Law No.6 of 2011 concerning Immigration). The immigration office has an important role in the supervision of foreigners. The concept of the role includes three things, namely: 1) The Role which includes norms related to one's position or place in society. The role in this sense is a series of rules that can guide someone in social life. 2) The Role as a concept that can be done by individuals in community organizations. 3) The Role that can also be said as an important individual behavior (Soekanto, 2001).

Immigration Supervision in Regulating Legislation in Indonesia.

Law Number 6 of 2011, Concerning Immigration.

1. Immigration supervision in several policies that apply in Indonesia is contained in the Immigration Law Number 6 of 2011, in article 66, the Minister conducts immigration supervision,

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2. Immigration supervision includes,
  - a. Supervision to Indonesian citizens who request travel documents, leave or enter Indonesian territory, and who are outside the territory of Indonesia and,
  - b. Supervision on the traffic of foreigners entering or leaving the territory of Indonesia as well as supervision on the presence and activities of foreigners in Indonesia.

The supervision currently carried out by the immigration function towards refugees is only limited to administrative supervision, where the RUDENIM in this case carries out its supervision only to control the presence of refugees through data. Refugees are not categorized as foreigners as regulated in the Immigration Law No. 6 of 2011, but they are given the status of refugees as foreigners whose existence is based on a conflict from their home country, so that the function of immigration control becomes narrow, even though immigration has the function of preventing and enforcing immigration law.

Many conditions are bad for refugees. On the other hand, we as a transit country only pursue documentary and administrative completeness for refugees. Far from it actually, whether the condition of the refugees is in accordance with the normal conditions or not, can be seen from their daily circumstances. Therefore, to understand the condition better, there is a need for a supervisory role to implement and carry out field supervision, although in article 33 paragraph 2 of Presidential Decree number 125 of 2016 concerning Handling and Supervision of Refugees from Abroad, which reads: Immigration control of refugees as referred to in paragraph 1, is carried out when found, during in the emplacement in shelter and outside the shelter, during the dispatch to the destination country, and when agreeing voluntary return and deportation. If we look at the immigration function (RUDENIM), immigration control is only administrative in nature, but if we look at the immigration control function regulated in the Immigration Law No. 6 of 2011 in Article 66 paragraph 2 (b), it reads: supervision of the traffic of foreigners entering or leaving Indonesian territory as well as supervision of the presence and activities of foreigners in Indonesian territory. The two regulations are not synchronous. There are differences in functions, but the objects are broadly the same, namely foreigners. Hence, if in the Immigration Law there is a supervisory function related to the activities of foreigners, the Presidential Decree number 125/2016 also should attach a supervisory function to the activities of refugees and asylum seekers, or it can be called as field supervision.

The conditions in the presence of refugees, asylum seekers, and illegal migrants can be seen from several factors, including based on this understanding, illegal migrants in Indonesia, namely foreigners who enter and are in the jurisdiction of the Republic of Indonesia without going through legal procedures in accordance with laws and regulations, which apply as regulated in Law Number 6 of 2011 concerning Immigration. Judging from the background of this research, the main issue to be examined is about how the RUDENIM's supervisory function in complying with the additional task of immigration control of refugees in the aspect of state sovereignty.

## **Factors that influence immigrants**

There are several factors that influence immigrants to migrate to other countries, namely (Nugroho, 2018):

### **Encouraging Factors**

Factors that encourage immigrants or refugees from abroad to leave the country due to prolonged conflicts triggered by factors such as different ethnicities, security and political conditions, added with violations of human rights, economic crises that occur due to war (low welfare); and the persuasion of smugglers / agents. These immigrants usually come from countries such as Afghanistan, Iraq, Pakistan, Sri Lanka, Myanmar, Bangladesh, Iran, and India. Based on this regulation, Indonesian government is obliged to accommodate and protect refugees from abroad who are affected by conflicts in their countries.

### **Attracting Factors**

Australia is an economically developed country, has encouraged immigrants to come and seek asylum, and Australia is one of the countries that signed the 1951 Geneva Conventions and the 1967 Protocol on refugees. It undoubtedly has become a special attraction for immigrants. Indonesia's strategic geographic position as a link between the Central and Middle East Asia regions with Australia in the movement of migration flow has made Indonesia a transit area that many immigrants pass through. What needs to be watched out for are illegal entrances (mouse path), both in sea routes and land routes, considering that Indonesia is a large archipelagic country and existing crossings have not been optimally guarded. Seeing this condition, the existence of a world organization in Indonesia that deals with refugees, namely the United Nations High Commissioner for Refugees (UNHCR), is procedurally 'considered' by asylum seekers to be a fast track in issuing refugee status. The issue is that UNHCR Malaysia no longer accepts refugee status applications because the number of asylum seekers and refugees in Malaysia has reached more than 40 thousand people. Based on data from UNHCR as of January 31, 2017, refugees in Indonesia are accommodated in Detention room in immigration office, in RUDENIM, in Directorate General of Immigration, at Community Houses, or stay as Independent Immigrants throughout Indonesia.

### **Modus**

The Legis of Presidential Decree regarding visa-free policies granted to 169 countries have encouraged refugees to enter Indonesia. Apart from using BVK they use Visa On Arrival and visit visa. The refugees applied for UNHCR asylum seeker / refugee status in Indonesia. Then they live in the place of acquaintances or relatives (for example: Puncak area, Bogor District) or become dependents

to the International Organization for Migrants (IOM), and if there is an opportunity, funds and facilitators (smugglers), they will go to Australia illegally.

Illegal Refugees and illegal immigrants enter Indonesian territory via Malaysia, Vietnam and Thailand. Their illegal entry to Indonesia is facilitated by smugglers by paying a total of ± USD 400 using the traditional route/mouse path, along the northern coast of Sumatra. Then they go to Jakarta by plane / boat / bus (destination: apply for asylum seeker / refugee status at UNHCR), and then they live in a place of acquaintance / relative (eg: around Puncak area, Bogor District) or being IOM's dependents. And if there is an opportunity, funds, and facilitators (smugglers), they depart to Australia illegally. Problems related to issues with irregular migration, the flow of people smuggling, and trafficking in persons cannot be resolved without cooperation between countries (Rafiki, 2017). The increase in the number of irregular migration, such as people smuggling and trafficking in persons, has had a negative impact on Asia Pacific countries, especially transit countries such as Indonesia. The region these immigrants want to go is Australia. Indonesia's strategic geographic position as a link between the Central Asia and Middle East regions with Australia in the movement of this migration flow has made Indonesia a transit area that many immigrants pass through. Simultaneously, with the entry of irregular migration, other issues such as infectious diseases, smuggling of goods, narcotics and humans will follow, even with activities related to terrorist groups.

### **Foreign Terrorist Fighters (FTF) Movement**

Foreign terrorist fighters are "individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict (Nugroho, 2018)." Seeing from the description above, the role of the immigration intelligence is very important in several scopes of immigration policies that regulate immigration control, that is the provisions in Law No. 6 of 2011 concerning Immigration, and Presidential Decree No. 125 of 2016, concerning the Handling and Supervision of Refugees from Abroad. The role of the intelligence provides certainty for the presence of foreigners in Indonesian territory, in order to supervise their presence. The urgency of immigration control cannot be differentiated, although the scope of the regulation is different. The scope of immigration control in a broad sense is clarified in Law Number 6 of 2011 concerning Immigration.

### **Approach**

This type of research is normative juridical research, which asks about the application of rules or standards in positive law (Marzuki, 2011). The research approach used is the statutory approach, conceptual approach and case approach. The legal material from this research using secondary data and legal materials related to statutory regulations, scientific books and journals. The technique of searching primary and secondary legal materials is done by studying literature which is a way to gather information by looking at and examining library materials (literature, previous research results, scientific magazines, scientific bulletins, scientific journals, Web Ministries or institutions) and internet searching (Raharjo, 2008). The analysis technique in this research is investigation strategy (Amirudin & Asikin, 2016), by using the deduction method which is to explain a general thing then draw it to a more specific conclusion. Furthermore, inventorying and identifying the laws and regulations, and then analyzing the relevant cases and the laws and regulations by interpreting the law, to then draw conclusions from the results of the analysis. Interpretation of the law used in this research is Grammatical Interpretation (interpreting the law according to the meaning of words (terms)) and Systematic Interpretation (connecting one article with another article in a law or with other laws).

### **Implications**

Immigration as the front guard or gatekeeper for Indonesian territory is also the guardian of sovereignty. As mandated in the law Article 75 Paragraph 2 of Law Number 6 of 2011 concerning Immigration, every Immigration official can take Immigration Administrative Measures (IAM) in the form of inclusion in the list of prevention or deterrence, limitation, change, or cancellation of Residence Permits, imposition of fees burden, even deportation from Indonesian territory. Immigration Officers who carry out the administrative action referred to, can rely on the "presumption" clause alone, or consider the foreigner to have no benefit (principle of benefit) for the Indonesian state, based on the principle of selective policy (selective policy principle).

Immigration Intelligence has the role of providing early detection of any possible disturbances caused by foreigners, both those who will enter Indonesian territory and foreigners who are and have activities in Indonesian territory that can disturb security and order (foreigner supervision), where the disturbance can affect / threaten the stability of the country.

In Law No. 6 of 2011 concerning Immigration, it does not recognize the terms refugees and asylum seekers. This Law only regulates foreign citizens who enter and leave Indonesian territory and hold official documents. This has resulted in immigration officials being unable to do much regarding the supervision and handling of refugees and asylum seekers residing in Indonesia. As the result, there is a large number of refugees and asylum seekers in Indonesia. Based on Presidential Decree No. 125 of 2016 concerning the Management of Refugees from Abroad, the Immigration Detention Center (RUDENIM), which originally functioned only as a temporary shelter for foreigners who will be subject to Immigration Administrative Measures (IAM), has now changed its function into a temporary shelter for asylum seekers and refugees. In fact, almost all Immigration Detention Centers in Indonesia have reached overcapacity due to the large number of refugees residing in Indonesia (Belarminus & Meiliana, 2018). After entering 2020, the

placement of refugees in DKI Jakarta is no longer at RUDENIM Kalideres, but at KODIM (Military District Base) in Central Jakarta, and indeed the placement policy for refugees involved several institutions, for example the local government.

Immigration carries out its function in terms of safeguarding the sovereignty of the Republic of Indonesia. This cannot be separated from the authority of the immigration unit, namely RUDENIM, which has the scope of the function of immigration control, in maintaining the entry and exit of refugees and asylum seekers. The function carried out by RUDENIM does have a different space and existence from the function of immigration control in a broad sense, but seeing from the definition of immigrants or newcomers and the meaning of foreigners, it becomes the same, because they both monitor the presence of foreigners, even though the terms foreigners here refers to refugees and asylum seekers which protected in an international convention.

Seeing from the description above, the role of immigration intelligence is highly prominent in several scopes of immigration policies that regulate immigration control, such as in the provisions in Law No. 6 of 2011 concerning Immigration, and Presidential Decree No. 125 of 2016, concerning the Handling and Supervision of Refugees from Abroad. The role of the intelligence provides certainty for the presence of foreigners in Indonesian territory, in order to keep them under supervision. The urgency of immigration control cannot be differentiated, although the scope of the regulation is different. The scope of immigration control in a broad sense is clarified in Law Number 6 of 2011 concerning Immigration. The differentiation of the supervisory positions held by RUDENIM (Refugees) and the Directorate General of Immigration for the Supervision of Indonesians and foreigners can be examined from the purpose of the State in playing its role and participation in treating humans according to their human rights, in this case foreign citizens and refugees. The position of RUDENIM is very much determined from the subject of its supervision. If the subject of supervision of RUDENIM and the Directorate General of Immigration are both foreign citizens, it is clear that the supervision of foreigners is regulated in the Immigration Law and how the supervision is carried out, so it provides legal certainty whether the foreigner can be declared legal or illegal, and then given measures in accordance to immigration law enforcement process.

RUDENIM is different even though they both supervise foreigners, but the foreigners in question are included in the elements of exclusion, where the foreigners are included in certain laws or into international agreements. In the implementation of Presidential Decree number 125 of 2016 concerning Handling of Refugees from Abroad, it did not run smoothly with regard to its supervision. That is because Indonesia classifies refugees as people who in fact have to get maximum protection but different from foreigners as regulated in the Immigration Law, even though the mechanism for entering or coming into Indonesian territory is the same, and most of them have the same goal in the end, namely wanting to become Indonesian citizens, from the mechanism of entering Indonesian territory as asylum seekers and refugees, and / or entering as foreigners who work and seek to obtain Indonesian citizen status.

In practice in the field, the government is experiencing resistance to take action. In fact, the Immigration Detention Center should not be used to accommodate asylum seekers and refugees. Apart from being overcrowded, the RUDENIM was not established for that purpose. In addition, detaining asylum seekers and refugees also gives Indonesia a bad reputation in dealing with refugees from abroad. In addition, the waiting time for determining refugee status in Indonesia is around two years. Indonesia does not sign the UN Refugee Convention, so it does not accept refugees to settle or integrate into Indonesian residents. Because there are so many requests for asylum and limited offers of asylum for refugees around the world, it is not uncommon for refugees to wait in Indonesia for five years or more. The flood of asylum seekers and refugees in the area of Immigration Detention Center which supposed to function as a temporary shelter for foreigners who commit violations of law in Indonesia has force the Director General of Immigration to issue Letter Number IMI-UM.01.01-2827 concerning the Return of Immigration Detention Centers Function. This letter contains the return of the function of the Immigration Detention Center as mandated by Article 1 number 33 of Law Number 6 of 2011 concerning Immigration that is Immigration Detention Center as a technical implementation unit that carries out the immigration function as a temporary shelter for foreigners who are subject to Immigration Administrative Measures (IAM).

The handling of asylum seekers and refugees is only a first step in the context of inspections and shelter. Therefore, the Government of Indonesia established Presidential Decree Number 125 of 2016 concerning Handling of Overseas Refugees, so that the Government has a reference standard for dealing with asylum seekers and refugees. Handling carried out by the Government of asylum seekers or refugees is carried out starting from discovery, shelter, security, and monitoring of Immigration. Immigration Control is carried out in order to double-check identity, request information regarding placement at the Immigration Detention Center (RUDENIM), and data collection for special letters or ID cards for refugees. Currently, the Immigration Office does not handle the handling of asylum seekers and refugees. With the promulgation of Presidential Decree Number 125 of 2016, government agencies have implemented such handling. RUDENIM has an Immigration control function. Immigration Control is carried out to the refugees when found, during in the shelter and outside the shelter, when dispatched to the destination country, and when accepting voluntary return and deportation. Rudenim is tasked with collecting data on foreigners who are suspected of being asylum seekers and refugees. Data collection is also carried out when foreigners who are suspected of being asylum seekers and refugees are found dead, to coordinate with the Ministry of Foreign Affairs to be reported to the Representative of the Consulate of the State concerned. In addition, RUDENIM also coordinates with UNHCR in data collection and placement to third countries. Immigration monitoring is necessary because the number of asylum seekers and refugees in Indonesia continues to increase.

According to Presidential Decree Number 125 of 2016, the Government of Indonesia is obliged to handle refugees. Seeing from the current conditions, immigration control is the spearhead of how the Indonesian state sovereignty is upheld. A human rights perspective does not only look at the human rights aspect of refugees, but from the human rights of the Republic of Indonesia.

Examination on the terms and meanings of refugees and 'asylum seekers' specifically is not regulated in the Immigration Law. The Immigration Law regulates the provisions for every person who enters and leaves Indonesian territory. These provisions apply to Indonesian Citizens (WNI) and Foreign Citizens (WNA). The term foreign citizens in the Immigration Law is "foreigner". The definition of "foreigner" in the Immigration Law is a person who is not an Indonesian citizen (Syahrin, 2018). Meanwhile, the definition of 'refugee' according to Presidential Decree Number 125 of 2016 is a foreigner who resides in the territory of the Unitary State of the Republic of Indonesia because of reasonable fear of persecution on the grounds of race, ethnicity, religion, nationality, membership of certain social groups, and different political opinions, as well as do not expect protection from their home country and / or have obtained asylum seeker status or refugee status from the United Nations through the High Commissioner for Refugees in Indonesia. If seen from the definition of 'refugee' in the Presidential Decree, it states the subject as 'foreigner'. All provisions regarding the presence of foreigners are regulated in the Immigration Law, starting from inspection of the Immigration, Residence Permit, and supervision. Observing this, Immigration Officers will experience difficulties in carrying out immigration control because refugees themselves are not foreigners, as regulated in Law Number 6 of 2011.

## Conclusions

Immigration control for refugees and asylum seekers is not only seen from the human rights side, but also the requirements for security functions in the aspect of state sovereignty that must be upheld. The activity of the foreigners in Indonesian territory must in accordance to the reported activity or the attitude as in the purpose of visit and the granted permission. Hence from the mandate of Presidential Decree Number 125 of 2016, the function of supervision towards refugees conducted by RUDENIM is an additional task for RUDENIM, because in Law Number 6 of 2011 concerning Immigration, RUDENIM is a unit that supervises foreigners where they violate immigration law (Immigratoir) who will then be detained in a shelter as immigration law enforcement. The additional task for RUDENIM for supervising refugees is a much-needed part for upholding state sovereignty in the presence of refugees and asylum seekers.

Upholding the aspect of state sovereignty on the supervision of refugees and asylum seekers is part of upholding human rights for refugees and asylum seekers, because indirectly the effect of enforcing immigration control for refugees and asylum seekers in Indonesia makes UNHCR or third countries make great efforts to find permanent solutions to the placement of refugees and asylum seekers.

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